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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,895	07/19/2005	Carina Sacha Snijder	4662-31	8425
23117	7590	12/02/2008	EXAMINER	
NIXON & VANDERHYE, PC			RUDDOCK, ULA CORINNA	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22203			1794	
MAIL DATE		DELIVERY MODE		
12/02/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,895	<b>Applicant(s)</b> SNIJDER ET AL.
	<b>Examiner</b> Ula C. Ruddock	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 August 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 10-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-146/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

#### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed August 13, 2008. The 112, 2<sup>nd</sup> paragraph rejection has been withdrawn.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 103***

3. Claims 1-4 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Aversa et al. (US 6,090,116) in view of Schmitt et al. (US 6,669,706). D'Aversa et al. disclose knitted surgical mesh that can comprise monofilament or multifilament yarns made of polyethylene (col 2, ln 5-21). D'Aversa discloses the claimed invention except for the teaching that the mesh comprises sheath and core yarns.

Schmitt et al. disclose multifilament surgical support mesh exhibiting improved resistance to inhabitation of bacteria and other infectious matter (col 1, ln 14-17). Schmitt discloses prior art wherein the surgical mesh comprises polyethylene (col 1, ln 55). The surgical mesh can be knitted and is produced from multifilament yarns (col 1, ln 28-36). The multifilament yarns can be bicomponent yarns composed of a sheath and core (col 6, ln 9-12). The yarns are encapsulated within a matrix that provides an infection-impervious barrier (col 5, ln 19-31). A medicinal substance is incorporated into the matrix encapsulating the yarns (col 7, ln 7-12). It would have been obvious to one having ordinary skill in the art to have used Schmitt's teaching of a bicomponent yarn with the yarn of D'Aversa, motivated by the desire to obtain a mesh material that has greater flexibility and pliability.

D'Aversa and Schmitt et al. disclose the claimed invention except for the teaching that the polyethylene yarn has a tensile strength of more than 1.0 GPa, a relative viscosity of more than 5 dl/g, and that the yarn is formed of a sheath and core having a weight ratio between the sheath and core of below 5:1 or 3:1 or 2:1.

Although D'Aversa and Schmitt et al. do not disclose the tensile strength property and relative viscosity property, it is inherent to presume that these properties are inherent to the polyethylene yarns of D'Aversa and Schmitt et al. Support for said presumption is found in the use of like materials (i.e. multifilament, bicomponent polyethylene yarns). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a polyethylene yarn having a tensile strength of more than 1.0 GPa, a relative viscosity of more than 5 dl/g would obviously have been present once the D'Aversa and Schmitt et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Finally, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the weight ratio between the sheath and core be below 5:1 or 3:1 or 2:1, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. In the present invention, one would have made the weight ratio between the sheath and core be below 5:1 or 3:1 or 2:1, motivated by the desire to create a mesh material that has the desired pliability and structural integrity.

Regarding claims 10 and 14, Applicant discloses that the sheath filaments are "melt-adhered to one another." It should be noted that the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation (i.e., melt-adhered) has not been given patentable weight.

***Response to Arguments***

4. Applicant's arguments filed August 13, 2008, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the present invention is different from the Schmitt invention because the present invention requires a yarn that is comprised of "multiple filaments." This argument is not persuasive because it is not commensurate in scope with the claims, as presently written. The claims do not require multiple filaments. Applicant also argues that in the Schmitt reference there is no disclosure or suggestion that such yarns have "individual core filaments which show substantially no adhesion to one another again individual sheath filaments which provide a substantially non-porous layer surrounding the core filaments." This argument is also not commensurate in scope with the claims because the claims, as presently written, do not specify or require "individual core filaments" or "individual sheath filaments." Therefore, the rejection is maintained.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the

mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/  
Primary Examiner, Art Unit 1794